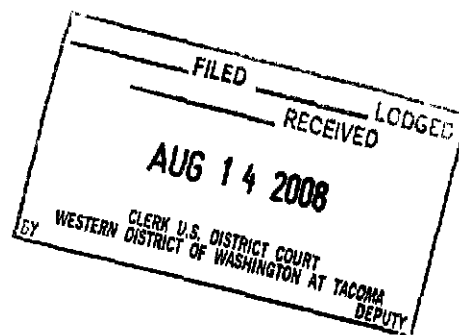


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08-CV-05489-OBJ



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN S. PETERSON AS TRUSTEE ON BEHALF )  
OF THE BANKRUPTCY ESTATE OF LESLEE )  
MACDONALD, )

Plaintiff, )

v. )

THE KROGER CO. and FRED MEYER STORES, )  
INC., dba QUALITY FOOD CENTERS, INC., )

Defendants. )

NO. C08-5489 RJB

OPPOSITION TO REMOVAL

TO: Clerk of the Court, United States District Court for the Western District  
Of Washington at Tacoma

AND TO: Defendants The Kroger Co., and Fred Meyer Stores, Inc., dba Quality Food  
Centers, Inc.

AND TO: Francis L. VanDuesen, Jr. and Adam Hughes of Miller Nash, LLP,  
Defendants attorneys.

Plaintiff John S. Paterson As Trustee On Behalf Of The Bankruptcy Estate Of Leslee  
MacDonald (hereinafter Plaintiff) by and through attorney Novelle Ballard respectfully states as  
follows:

1. 28 U.S.C. section 1441 provides the Court with discretion. Defendants' request  
for Removal is not mandatory.
2. Sec. 1441 (e) (1) (A) refers to 28 U.S.C. section 1369 (b) (1) which provides one  
basis for Plaintiff's opposition to Removal. Plaintiff John S. Peterson and Leslee

1  
2 MacDonald, the non-party claimant, are both citizens of the State of Washington.  
3 Non-party Dan Diederichs, who at all times material to claimant MacDonald's  
4 employment related alleged wrongful termination claims, was the store manager of  
5 the QFC grocery store located in Port Hadlock, Jefferson County, Washington.  
6 Diederichs is the person alleged by Claimant MacDonald to have told her she was  
7 terminated. Diederichs is a citizen of Washington State. Witnesses who are past  
8 and/or current employees of the QFC grocery store located in Port Hadlock,  
9 Jefferson County, Washington are citizens of the State of Washington. Witnesses  
10 who are not past or current employees of the Port Hadlock QFC grocery store are  
11 also citizens of the State of Washington. Counsel for Plaintiff has no intention of  
12 calling any trial witness who is not a resident of the State of Washington.

13 3. 28 U.S.C. sec. 1369 (b) (2) provides a second basis for Plaintiff's opposition to  
14 Removal. All claims brought in the case, originally filed in Jefferson County  
15 Superior Cause No. 07-2-00456-3, are based on the laws of the State of Washington  
16 and the claims asserted will be governed by the laws of the State of Washington.

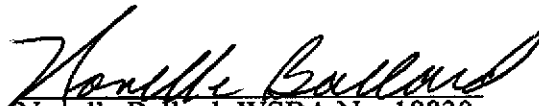
17 4. 28 U.S.C. sec. 1441 (e) (1) (6) provides the third basis for Plaintiff's opposition  
18 to Removal. John S. Peterson resides in Kingston, Kitsap County Washington.  
19 Leslee MacDonald, Dan Diederichs and all witnesses are believed to reside in Port  
20 Ludlow or Port Townsend, Jefferson County Washington. The QFC grocery store  
21 located in Port Hadlock, Jefferson County, Washington is the only store at which  
22 Leslee MacDonald worked and is the only store owned by the named Defendants  
23 at issue in this matter. It would be inconvenient for all persons who will be called  
24 to trial in this matter to travel from Port Hadlock, Port Ludlow and/or Port  
25 Townsend, in Jefferson County to Tacoma. The cost of gasoline, the inconvenience  
26 of time off of work and the cost of lodging which may be needed due to trial  
27 calendaring provide the basis for the Court's discretion to abstain from accepting

1 this matter and find that the Jefferson County Superior Court is the appropriate and  
2 convenient forum for this matter.

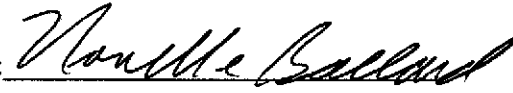
3  
4 WHEREFORE, Plaintiff and Non-Party Claimant Leslee MacDonald request that the Court  
5 abstain from accepting Removal of this action.

6 Dated this 13<sup>th</sup> day of August, 2008

7 MITCHELL LANG & SMITH

8  
9  
10   
11 Novelle Ballard, WSBA No. 18830  
12 [nballard@mls-law.com](mailto:nballard@mls-law.com)  
13 P.O. Box 65403  
14 Port Ludlow, WA 98365

15 I certify that on August 13, 2008,  
16 I caused a true full copy of this document to be  
17 sent via overnight mail in a sealed prepaid envelope  
18 to the following:  
19 Francis Van Duesen Jr., Attorney for Defendants  
20 Kroger Company, et., al., 4400 Two Union Square  
21 601 Union Street, Seattle WA 98101-2152

22 By:   
23 At: Port Ludlow, Washington